



Bureau of Indian Affairs
Office of Trust Services
Division of Water and Power



WATER INFRASTRUCTURE
IMPROVEMENTS FOR THE NATION
(WIIN) ACT OF 2016
Title III, Subtitle A
Safety of Dams

Tribal Consultation
February 2017

WHAT IS THE PURPOSE OF TITLE III, Subtitle A OF THE WIIN ACT?

The primary purpose of the Water Infrastructure Improvements for the Nation (WIIN) Act, Title II, Subtitle A is to provide funds to help reduce the deferred maintenance of high- and low-hazard potential Indian dams.



AGENDA

- Introductions
- BIA Safety of Dams Program Background
- Overview of the WIIN Act
- Break
- Programmatic Goals
- Funding Prioritization Method
- Break
- Questions/Discussion



Welcome and Introductions

- Helen Riggs – Deputy Bureau Director, Trust Services
- Yulan Jin – Division Chief, Water and Power
- Scott Goss – Branch Chief, Safety of Dams
- Central Office Staff
- Regional Office Staff Leadership and Staff
- Tribal Leaders / Representatives

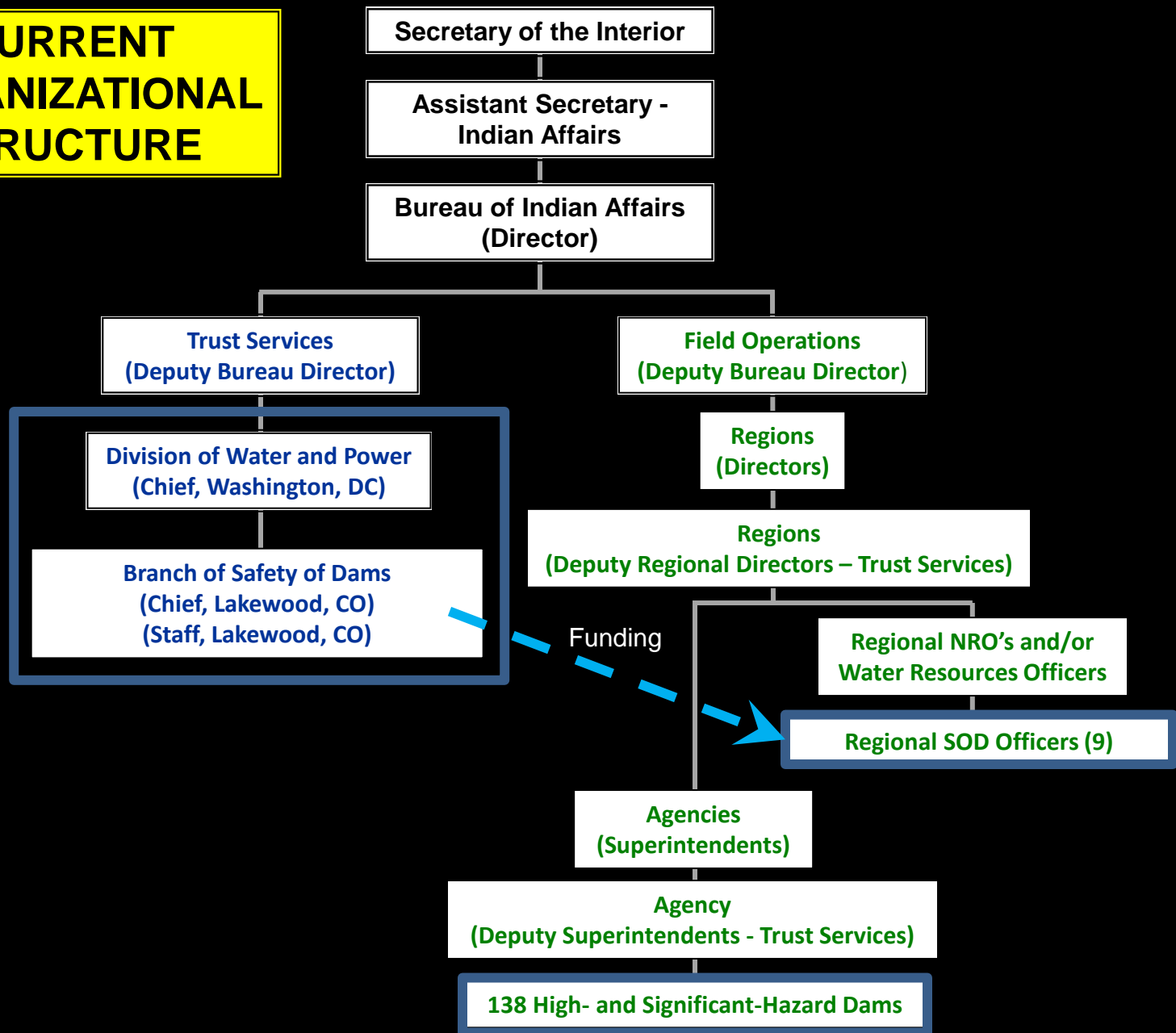


BIA SAFETY OF DAMS PROGRAM

The mission of the BIA Safety of Dams Program is to reduce the potential loss of human life and property damage caused by dam failure by making BIA Program dams as safe as practically possible.

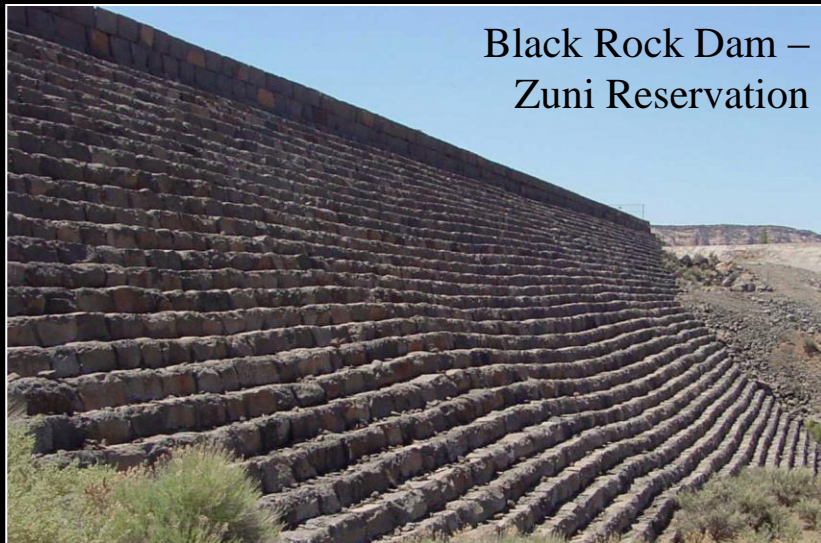


CURRENT ORGANIZATIONAL STRUCTURE

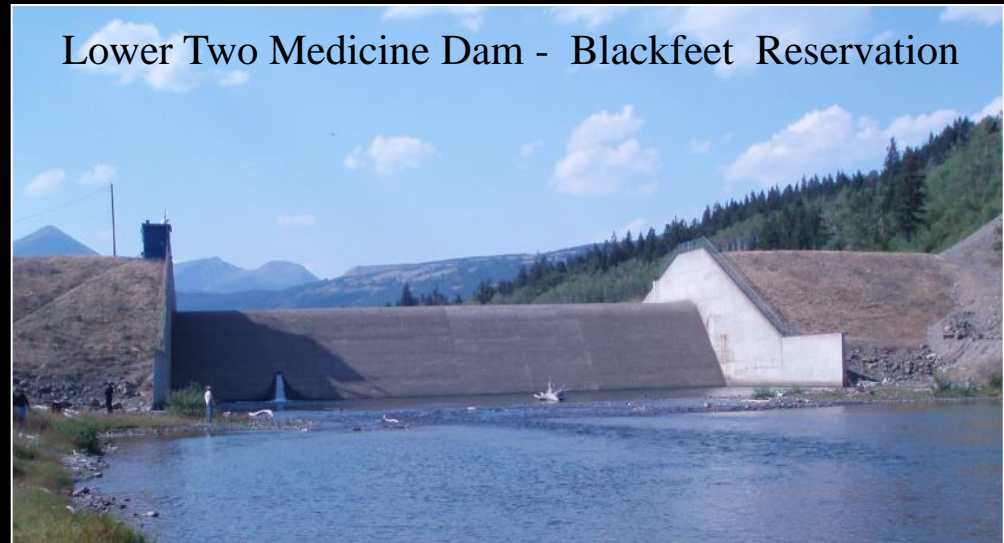


BIA SAFETY OF DAMS PROGRAM

- Established under the Indian Dams Safety Act of 1994, Public Law No. 103-302, 25 U.S.C. § 3801
- Manages the dams located on Indian lands within the U.S., with special emphasis on those dams that would pose a threat to human life



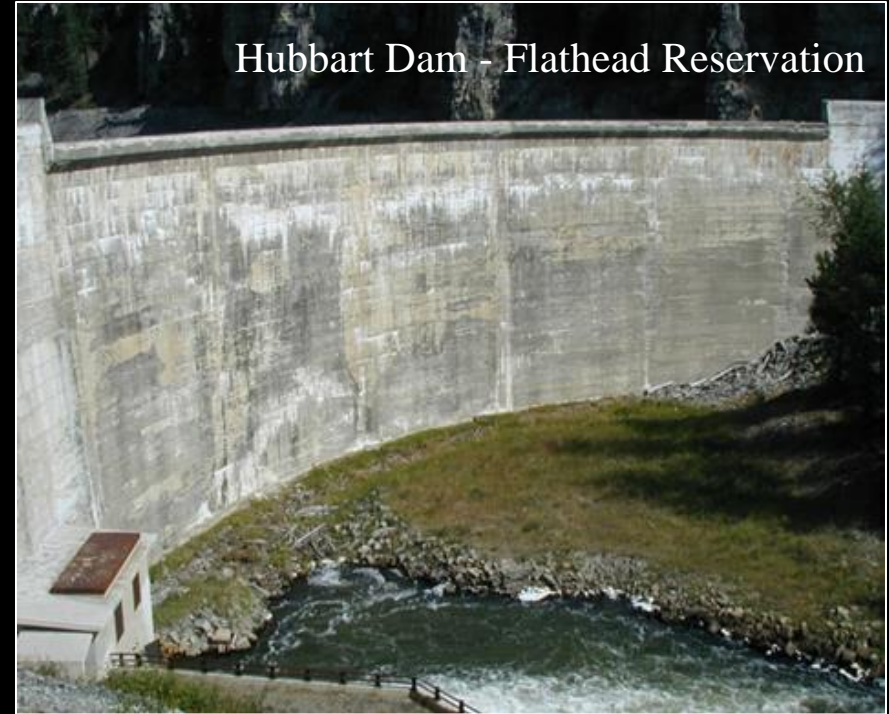
Black Rock Dam –
Zuni Reservation



Lower Two Medicine Dam - Blackfeet Reservation



BIA SAFETY OF DAMS PROGRAM



BIA SAFETY OF DAMS PROGRAM

Water Tank Dam - San Felipe Reservation



Red Lake Dam - Navajo Reservation



BIA SAFETY OF DAMS PROGRAM

Hazard Potential Classifications

Hazard Potential Classification	Loss of Human Life	Economic, Environmental, Lifeline Losses
Low	None expected.	Low and generally limited to owner.
Significant	None expected.	Yes.
High	Probable. One or more expected.	Yes (but not necessary for this classification).

FEMA 333: Federal Guidelines for Dam Safety, April 2004



BIA SAFETY OF DAMS PROGRAM

- Currently responsible for the safety of 138 high-hazard potential dams on 43 Indian reservations
- Annual funding provides for dam rehabilitation projects, maintenance, and program activities but is insufficient to address all deferred maintenance



BIA SAFETY OF DAMS PROGRAM

43 Tribes included in the current Safety of Dams Program

Great Plains (7 Tribes):

- Crow Creek Sioux
- Sprit Lake
- Oglala Sioux
- Rosebud Sioux
- Standing Rock Sioux
- Turtle Mountain of Chippewa

Midwest (1 Tribe):

- Menominee Indian Tribe of Wisconsin

Pacific (1 Tribe):

- Pit River Tribe

Eastern(1 Tribe):

- Mississippi Band of Choctaw Indians

Northwest (8 Tribes):

- Confederated Tribe of Colville
- Cow Creek Band of Umpque Tribe
- Confederated Salish & Kootenai Tribes
- Confederated Coquille Tribe
- Shoshone-Bannock Tribes of Fort Hall
- Confederated Tribe of Warm Springs
- Metlakatla Indian Community-Annette Island
- Confederated Umatilla Tribe

Navajo (1 Tribe):

- Navajo Nation



BIA SAFETY OF DAMS PROGRAM

43 Tribes included in the current Safety of Dams Program

Southwest (11 Tribes)

- Zuni Pueblo
- Acoma Pueblo
- Laguna Pueblo
- Mescalero Apache
- Jicarilla Apache
- Santa Ana Pueblo
- Sandia Pueblo
- Southern Ute Mountain
- Tesuque Pueblo
- San Felipe
- Santa Clara Pueblo

Western (8 Tribes)

- Hopi
- San Carlos Apache
- Uintah & Ouray Ute Tribes
- White Mountain Apache
- Colorado River Indian Tribes
- Duck Valley Shoshone Paiute Tribes
- Walker River Paiute
- Tohono O'odham

Rocky Mountain(5 Tribes)

- Blackfeet
- Crow
- Chippewa-Cree of Rocky Boys
- Eastern Shoshone Tribe - Wind River
- Northern Arapaho Tribe - Wind River





- Rocky Mountain Region (7 Dams)**
- 18 Blackfeet
 - Four Horns
 - Lower Two Medicine
 - 19 Crow
 - Willow Creek
 - 20 Rocky Boy's
 - Bonneau
 - East Fork
 - 21 Wind River
 - Ray Lake
 - Washakie

- Great Plains Region (31 Dams)**
- | | | | |
|---------------|--------------|---------------------------|------------------------------|
| 23 Crow Creek | 25 Rosebud | 26 Spirit Lake Sioux | 27 Standing Rock |
| Ambrose | Antelope | Spirit Lake BIA 4 North | Prairie No. 1 |
| Crow Creek | Ghost Hawk | Spirit Lake BIA 4 South | Standing Rock No. 1 |
| 24 Pine Ridge | He Dog | Spirit Lake BIA 5 | 28 Turtle Mountain |
| Allen | Indian Scout | Spirit Lake Jetty 1 | Gordon |
| Kyle | Parmelee | Spirit Lake Jetty 2 | Belcourt Lake (Little Shell) |
| Oglala | Ponca | Spirit Lake Kurtz | |
| White Clay | Ring Thunder | Spirit Lake Spring Lake | |
| Wolf Creek | Rosebud | Spirit Lake St. Michael 1 | |
| | South Okreek | Spirit Lake St. Michael 2 | |
| | Sully 2 | Spirit Lake St. Michael 3 | |

Bureau of Indian Affairs Safety of Dams Program

Region, Reservation, and Dam Location Map of High- and Significant-Hazard Potential Dams



- Northwest Region (26 Dams)**
- 1 Colville
 - Owhi
 - Twin Lakes
 - 2 Coquille
 - Fourth Creek
 - Tarheel
 - 3 Cow Creek
 - Creekside Development No. 1
 - Creekside Development No. 3
 - 4 Flathead
 - Black Lake
 - Crow
 - Hell Roaring
 - Hubbart
 - Jocko
 - Kicking Horse
 - Little Bitterroot
 - Lower Dry Fork
 - McDonald
 - Mission
 - Ninepipe
 - Pablo
 - Tabor
 - Twin (Turtle) Lake
 - Upper Dry Fork
 - 5 Fort Hall
 - Blackfoot
 - Equalizer
 - 6 Umatilla
 - Indian Lake
 - 7 Warm Springs
 - Happy Valley
 - 8 Annette Island Reserve
 - Chester Lake

- Pacific Region (1 Dam)**
- 9 XL Ranch
 - Lauer

- Western Region (28 Dams)**
- | | |
|-------------------|----------------------|
| 10 Colorado River | 13 Hopi |
| Headgate Rock | Pasture Canyon |
| 11 Duck Valley | 14 San Carlos |
| Wild Horse | Coolidge |
| 12 Fort Apache | Dry Lake |
| A-1 | Elgo |
| Bog Tank | Point of Pines |
| Bootleg | Tufa Stone |
| Christmas Tree | Upper Point of Pines |
| Cooley | 15 Tohono O'odham |
| Cyclone | Menagers |
| Davis | Tat Momolikit |
| Drift Fence | 16 Uintah & Ouray |
| Horseshoe Cienega | Bottle Hollow |
| Pacheta | Midview |
| Reservation | 17 Walker River |
| Shush Be Tou | Weber |
| Shush Be Zahze | |
| Sunrise | |

- Navajo Region (14 Dams)**
- 22 Navajo
 - Asaayi
 - Blue Canyon
 - Captain Tom
 - Charley Day Spring
 - Cutter
 - Ganado
 - Many Farms
 - Red Lake
 - Round Rock
 - Todacheene
 - Tohajilee
 - Tsalle
 - Wheatfields
 - Window Rock

- Southwest Region (29 Dams)**
- | | | |
|---------------------|---------------------|-----------------|
| 29 Acoma | 32 Mescalero Apache | 36 Santa Clara |
| Acomita | Eagle Creek No. 1 | Nanaka |
| 30 Jicarilla Apache | Lake Mescalero | Pin Dee |
| Dulce | Silver Lake | Tschicoma |
| Fourth of July | 33 San Felipe | Weinpovi |
| Grady Hamilton | San Francisco | 37 Southern Ute |
| La Jara | Water Tank | Lake Capote |
| Lower Mundo | 34 Sandia | 38 Tesuque |
| Pappaws | Sandia Pueblo 82-1 | Tesuque |
| Pine Tree | Sandia Pueblo 82-2 | 39 Zuni |
| Stone Lake | Sandia Pueblo 82-3 | Black Rock |
| 31 Laguna | Sandia Pueblo 82-4 | Pescado |
| Paguate | 35 Santa Ana | Trapped Rock |
| | Santa Ana | |

- Midwest Region (1 Dam)**
- 40 Menominee
 - Neopit

BIA Central Office
Washington, DC

BIA Central Office
Lakewood, CO

Eastern

Southern
Plains

Southwest

Navajo

Western

Pacific

Rocky
Mountain

Great
Plains

Northwest

- Eastern Region (1 Dam)**
- 41 Choctaw
 - Lake Pushmataha

- Legend**
- BIA High- or Significant-Hazard Potential Dam
 - BIA Central Office
 - ★ BIA Regional Office
 - American Indian Reservation with Dam

BIA SAFETY OF DAMS PROGRAM

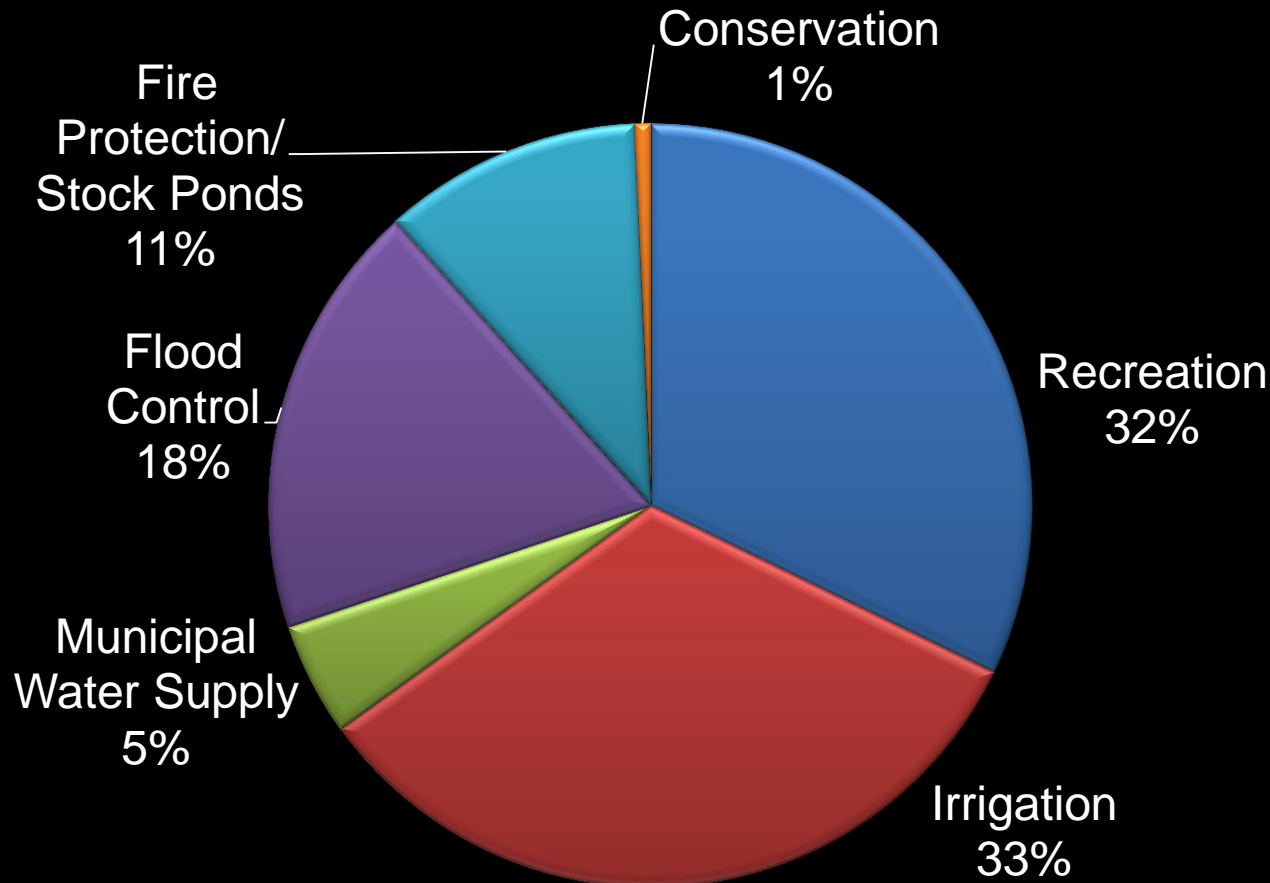
Program activities include:

- Dam Rehabilitation Construction
- Risk Management and Risk Reduction Analysis
- Emergency Management
- Early Warning Systems
- Dam Security Reviews and Screening
- Dam Safety Inspections
- Dam Tender and Safety Training
- Dam Operations and Maintenance



BIA SAFETY OF DAMS PROGRAM

Current BIA dams provide a wide range of benefits for the various Indian reservations.



BIA SAFETY OF DAMS PROGRAM

Low-Hazard Dams

- Under current BIA policy, SOD funding is earmarked for high- and significant-hazard potential Indian dams.
- The BIA will need assistance from tribes when identifying low-hazard dams that are eligible for funding under the WIIN Act.



WATER INFRASTRUCTURE IMPROVEMENTS for the NATION ACT of 2016

TITLE III, SUBTITLE A

Signed into law on December 16th, 2016



WIIN ACT Key Points

Title III, Subtitle A, Section 3101 establishes:

- A program to address the deferred maintenance needs of Indian dams
- Two funds, for fiscal years 2017 to 2023 (7 years), as follows:
 - High-Hazard Fund: \$22.75 million annually
 - Low-Hazard Fund: \$10 million annually
 - Both funds will be used to repair, replace, and maintain eligible high- and low-hazard dams to reduce deferred maintenance
- A tribal committee to recommend legislation to modernize the Indian Dams Safety Act of 1994. (\$1 million)
- A floodplain management pilot program. (\$750,000 over 4 years)



Section 3101 - Funds Availability

- For each of fiscal years 2017 through 2023, the Secretary of the Treasury shall deposit \$22.75 million in the high-hazard dam deferred maintenance Fund and \$10 million in the low-hazard dam deferred maintenance Fund.
 - This only creates a Treasury account but does not give the Secretary authority to spend the funds.
- Amounts deposited in the Fund under subsection (a) shall be used, **subject to appropriation**, to carry out this subtitle.
 - These funds are only available after Congress gives specific authorization.
- Given the current budget cycle, BIA's earliest opportunity to request this funding may be during the fiscal year 2019 budget formulation.



WIIN ACT Key Points

Title III, Subtitle A, Section 3101 requirements:

- Tribal consultation within 60 days of enactment.
- A report outlining programmatic goals and prioritization of projects is due to Congress by April 14, 2017.
 - Prioritization requirements are defined by the WIIN Act.
- Every 180 days the tribes are asked to report an inventory of dams on their land to the Secretary of the Interior.
- Every year the BIA will report the condition of the dams under partial or total jurisdiction of the Secretary of the Interior to Congress.



DAM ELIGIBILITY

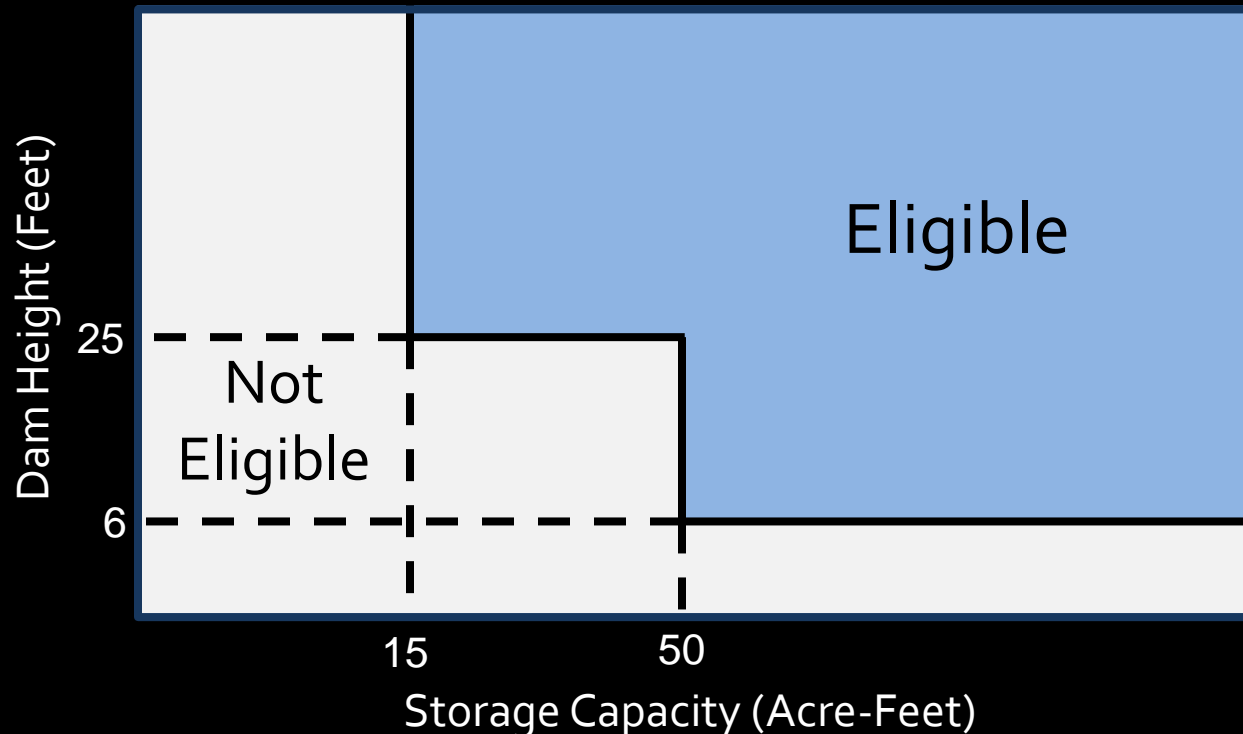
Title III, Subtitle A, Section 3101 (c)(2)(A)

- Eligible dams are included under the Indian Dams Safety Act of 1994 and
 - Are owned by the Federal Government and managed by the BIA, including dams managed under Indian Self-Determination contracts or compacts; or
 - Have deferred maintenance identified by the BIA.



DAM ELIGIBILITY

- High-hazard or
- Low-hazard and
 - 25 feet tall or higher and 15 acre-feet or more; or
 - 6 feet tall or more and 50 acre-feet or more



CONSULTATION TIMELINE

Date	Activity
December 10, 2016	WIIN Act passed the House and Senate and was referred to President for signature.
December 16, 2016	President signed the WIIN Act into law.
February 6 – 15, 2017	Tribal and landowner consultation meetings and webinars held.
March 3, 2017	Comments by the Tribes and landowners are due.
April 14, 2017	Secretary submits report with programmatic goals and prioritization criteria to Congress.



15 MINUTE BREAK



PROPOSED PROGRAMMATIC GOALS AND FUNDING PRIORITY METHOD



PROGRAMMATIC GOALS

The WIIN Act requires the BIA, in consultation with tribes, to define the programmatic goals that would enable the completion of repairing, replacing, improving, or performing maintenance on Indian dams as expeditiously as practicable.

(Refer to **Handout** for the full list of goals)

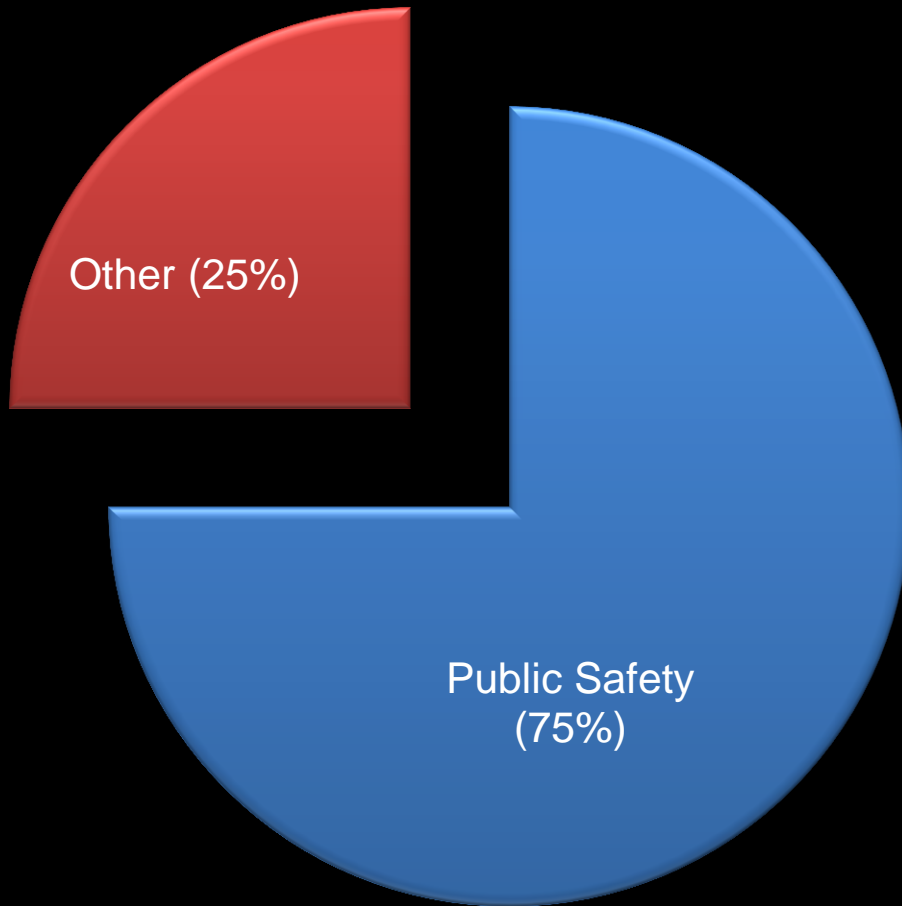


PROPOSED FUNDING PRIORITY METHOD

- The WIIN Act requires the BIA, in consultation with tribes, to establish a funding prioritization methodology using listed criteria for distributing funds.
- The proposed funding methodology maintains public safety as the most important factor for prioritizing spending from the High-Hazard Fund.
- The criteria are listed in Section 3101(3)(B).



Proposed Weighting for High-Hazard Dams



■ Public Safety (75%)

■ Other (25%) *

- Cultural and Natural Resources (3%)
- Ability to Operate the Dam (1.25%)
- Improve Safety, Health, or Accessibility (1.25%)
- Legal and Code Compliance (1.25%)
- Unmet Needs (1.25%)
- Protect Natural or Cultural Resources (1.25%)
- Existing Priority (1.25%)
- Potential Uses and Economic Benefits (6.25%)
- Current Flood Protection (1.25%)
- Future Flood Protection Potential (3%)
- Number of Tribes Served (2%)
- Tribal Population Served (2%)

Please offer suggestions or comments on the provided Handout.

* Percentage proposed by the BIA



FUNDING PRIORITY CRITERIA for High-Hazard Dams

- Threat to public safety – 75% (proposed)
- Other – 25% (proposed)
 - #1b -Threat to natural or cultural resources
 - #1c - Threat to the ability to operate the dam
 - #2a - Ability to improve safety, health, or accessibility
 - #2b - Ability to improve legal and code compliance
 - #2c - Ability to provide unmet needs
 - #2d - Ability to improve protection of natural or cultural resources



FUNDING PRIORITY CRITERIA for High-Hazard Dams

Other (continued) – 25% (proposed)

#3 - Existing Priority

#4 - Potential Uses and Economic Benefits

#5 - Current Flood Protection

#6 - Indian Dams Safety Act of 1994 Compliant

#7 - Future Flood Protection Potential

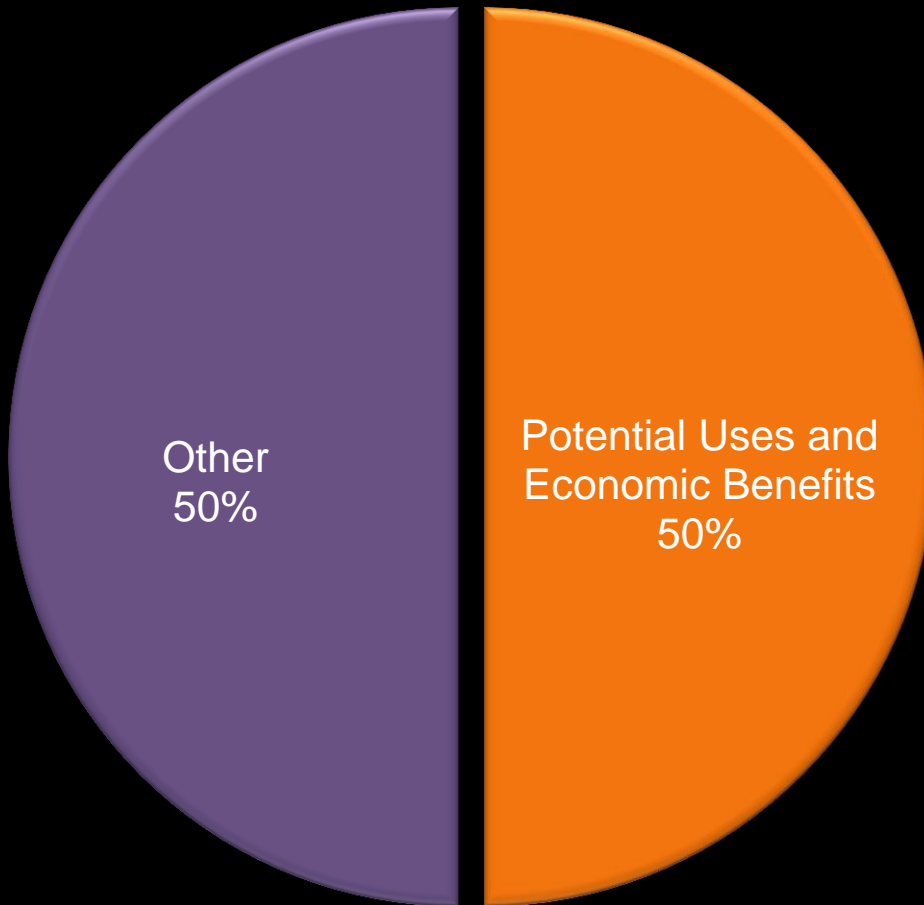
#8 - Additional Factors Recommended

#9 - Number of Tribes Served by the Dam

#10 - Population Served by the Dam



Proposed Weighting for Low-Hazard Dams



■ Potential Uses and Economic Benefits (50%) *

■ Other (50%) *

- Cultural and Natural Resources (8%)
- Ability to Operate the Dam (4%)
- Legal and Code Compliance (4%)
- Unmet Needs (4%)
- Protect Natural or Cultural Resources (4%)
- Current Flood Protection (4%)
- Future Flood Protection Potential (10%)
- Number of Tribes Served (6%)
- Tribal Population Served (6%)

Please offer suggestions or comments on the provided Handout.

* Percentage proposed by the BIA



FUNDING PRIORITY CRITERIA PROPOSED for Low-Hazard Dams

- Potential Uses and Economic Benefits – 50% (proposed)
- Other – 50% (proposed)
 - #1b -Threat to natural or cultural resources
 - #1c - Threat to the ability to operate the dam
 - #2a - Ability to improve safety, health, or accessibility - **Not applicable**
 - #2b - Ability to improve legal and code compliance
 - #2c - Ability to provide unmet needs
 - #2d - Ability to improve protection of natural or cultural resources



FUNDING PRIORITY CRITERIA PROPOSED for Low-Hazard Dams

- Other (continued) – 50% (proposed)
 - #3 - Existing Priority - Not applicable
 - #4 - Potential Uses and Economic Benefits
 - #5 - Current Flood Protection
 - #6 - Indian Dams Safety Act of 1994 Compliant
 - #7 - Future Flood Protection Potential
 - #8 - Additional Factors Recommended
 - #9 - Number of Tribes Served by the Dam
 - #10 - Population Served by the Dam



EXAMPLE OF A FUNDING PRIORITY SCORECARD

High-hazard Dam Scorecard							
Dam Name	Date Scored:						
Question	Input	Recorder	Reference Information	Criteria		Weight	Score
Does the dam fall under the jurisdiction of the IDSA of 1994?	No			#1a: Public safety risk	75	-	75.0
What is the dam's DSPR?	1						
What is the dam's AFP?	> 1E-3			#1b: Natural or cultural impact	100	3.00%	3.0
What is the dam's ALL?	> 1E-2			#1c: Issues from deferred maintenance	50	1.25%	0.6
Would failure cause harm to cultural resources?	High			#2a: Cost to reduce risk	90	1.25%	1.1
Would failure cause harm to natural resources?	High			#2b: Current violations	100	1.25%	1.3
Would failure cause financial harm to cultural or natural resources?	High			#2c: Address unmet tribal benefits	20	1.25%	0.3
Does deferred maintenance create problems operating the dam?	Design Life Concern			#2d: Protect natural or cultural resources	90	1.25%	1.1
What is the estimated total cost to reduce the ALL and AFP below tolerable thresholds?	> \$10M			#3: Funding priority rank	50	1.25%	0.6
Does the dam's condition violate any known codes, laws or standards?	Yes			#4: Potential for economic benefits	70	6.25%	4.4
What is the current annual economic value the dam provides?	>\$2M			#5: Flood prevention	75	1.25%	0.9
What is the dam's current funding priority placement?	In 5 years			#6: IDSA 1994 qualified	0	0.00%	0.0
What is the annual economic value the dam would provide if repaired or the lost economic value if failed?	>\$2M			#7: Potential for increased flood storage	100	3.00%	3.0
Does the dam currently provide flood storage? If so, what is the annual exceedance protection level?	Yes, 100 - 500 year			#8: Discretion of the Secretary	N/A	0.00%	-
Is there a need for new or increased flood damage reduction below the dam?	Yes			#9: Number of tribes	50	2.00%	1.0
Is the dam sited to allow increased flood water storage?	Yes			#10: Population	40	2.00%	0.8
How many tribes does the dam serve?	2					Overall score	0
What is the population directly served by the dam?	50-250						
What current benefits does the dam provide? What unmet tribal benefits could the dam provide?							
Benefits	Current	Unmet					
Domestic/Municipal Water Supply	Yes	No					
Irrigation Water Supply	Yes	No					
Flood Mitigation	No	Yes					
Commercial Recreation	No	Yes					
Tribal Recreation	No	No					
Stock Water Supply	No	No					
Habitat Improvement	No	No					
Critical Public Transportation	No	No					
Power Generation	No	No					
Other (specify_____)	No	No					
Total number of benefits:	2	2					



PROPOSED PRIORITY WEIGHTING

Funding Priority Criteria	Proposed High-hazard Weighting	Agree/ Disagree or Recommendation	Proposed Low-hazard Weighting	Agree/ Disagree or Recommendation
#1a: Threat to Public Safety	75%		N/A	N/A
#1b: Threat to Natural or Cultural Resources	3%		8%	
#1c: Threat to the Ability to Operate the Dam	1.25%		4%	
#2a: Ability to Improve Safety, Health, or Accessibility	1.25%		N/A	N/A
#2b: Ability to Improve Legal and Code Compliance	1.25%		4%	
#2c: Ability to Provide Unmet Needs	1.25%		4%	
#2d: Ability to Protect Natural or Cultural Resources	1.25%		4%	
#3: Existing Priority	1.25%		N/A	N/A
#4: Potential Uses and Economic Benefits	6.25%		50%	
#5: Current Flood Protection	1.25%		4%	
#6: Indian Dams Safety Act of 1994 Compliant	0%		0%	
#7: Future Flood Protection Potential	3%		10%	
#8: Additional Factors Recommended	0%	List Items:	0%	List Items:
#9: Number of Tribes Served by the Dam	2%		6%	
#10: Population Served by the Dam	2%		6%	

Please record your suggestions or comments on the provided Handout.



15 MINUTE BREAK



CONSULTATION QUESTION #1

What input do you have regarding the BIA's proposed Programmatic Goals?



PROGRAMMATIC GOALS

The WIIN Act requires the BIA, in consultation with tribes, to define the programmatic goals that would enable the completion of repairing, replacing, improving, or performing maintenance on Indian dams as expeditiously as practicable.

(Refer to **Handout** for the full list of goals)



CONSULTATION QUESTION #2

What new factors (if any) should be included in Criteria #8 as allowed by the WIIN Act?

Criteria #8: other factors as the Secretary determines to be appropriate to prioritize the use of available funds that are, to the fullest extent practicable, consistent with tribal and user recommendations received pursuant to the consultation and input process. (c)(3)(B)(viii)



PROPOSED PRIORITY WEIGHTING

Funding Priority Criteria	Proposed High-hazard Weighting	Agree/ Disagree or Recommendation	Proposed Low-hazard Weighting	Agree/ Disagree or Recommendation
#1a: Threat to Public Safety	75%		N/A	N/A
#1b: Threat to Natural or Cultural Resources	3%		8%	
#1c: Threat to the Ability to Operate the Dam	1.25%		4%	
#2a: Ability to Improve Safety, Health, or Accessibility	1.25%		N/A	N/A
#2b: Ability to Improve Legal and Code Compliance	1.25%		4%	
#2c: Ability to Provide Unmet Needs	1.25%		4%	
#2d: Ability to Protect Natural or Cultural Resources	1.25%		4%	
#3: Existing Priority	1.25%		N/A	N/A
#4: Potential Uses and Economic Benefits	6.25%		50%	
#5: Current Flood Protection	1.25%		4%	
#6: Indian Dams Safety Act of 1994 Compliant	0%		0%	
#7: Future Flood Protection Potential	3%		10%	
#8: Additional Factors Recommended	0%	List Items:	0%	List Items:
#9: Number of Tribes Served by the Dam	2%		6%	
#10: Population Served by the Dam	2%		6%	



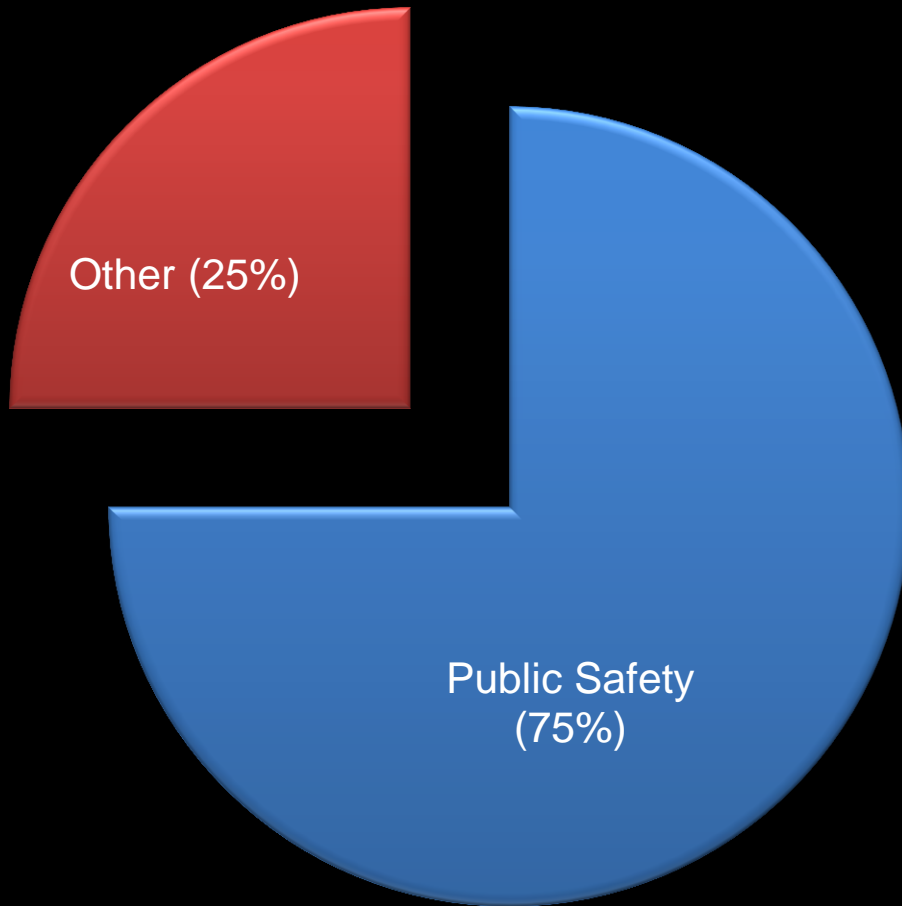
Please record your suggestions or comments on the provided Handout.

CONSULTATION QUESTION #3

What input do you have regarding the BIA's proposed weighting criteria for high-hazard dams?



Proposed Weighting for High-Hazard Dams



■ Public Safety (75%)

■ Other (25%) *

- Cultural and Natural Resources (3%)
- Ability to Operate the Dam (1.25%)
- Improve Safety, Health, or Accessibility (1.25%)
- Legal and Code Compliance (1.25%)
- Unmet Needs (1.25%)
- Protect Natural or Cultural Resources (1.25%)
- Existing Priority (1.25%)
- Potential Uses and Economic Benefits (6.25%)
- Current Flood Protection (1.25%)
- Future Flood Protection Potential (3%)
- Number of Tribes Served (2%)
- Tribal Population Served (2%)

Please offer suggestions or comments on the provided Handout.

* Percentage proposed by the BIA

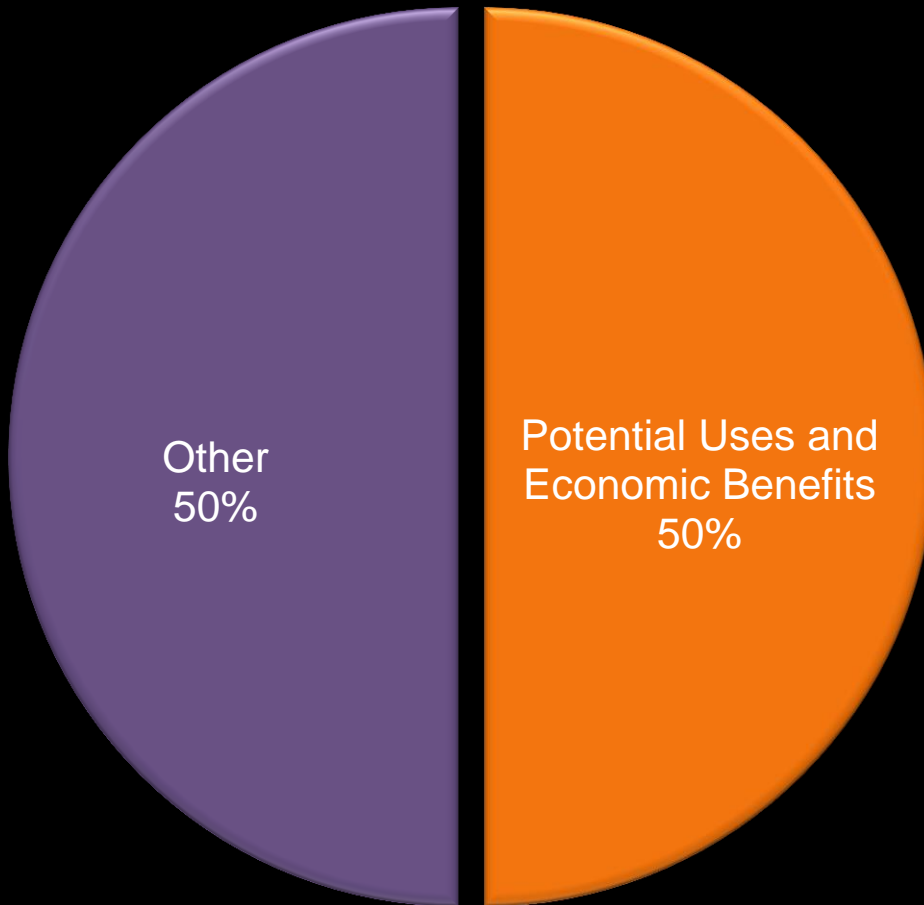


CONSULTATION QUESTION #4

What input do you have regarding the BIA's proposed weighting criteria for low-hazard dams?



Proposed Weighting for Low-Hazard Dams



■ Potential Uses and Economic Benefits (50%) *

■ Other (50%) *

- Cultural and Natural Resources (8%)
- Ability to Operate the Dam (4%)
- Legal and Code Compliance (4%)
- Unmet Needs (4%)
- Protect Natural or Cultural Resources (4%)
- Current Flood Protection (4%)
- Future Flood Protection Potential (10%)
- Number of Tribes Served (6%)
- Tribal Population Served (6%)

Please offer suggestions or comments on the provided Handout.

* Percentage proposed by the BIA



COMMENTS

Comments can be submitted until
March 3, 2017

Email: *consultation@bia.gov*

Mail:

Ms. Elizabeth Appel

Office of Regulatory Affairs and Collaborative Action

U.S. Department of the Interior

1849 C Street NW, Mail Stop 3642–MIB

Washington, DC 20240



SEC. 3101. INDIAN DAM SAFETY.

(a) DEFINITIONS.—In this section:

(1) DAM.—

(A) IN GENERAL.—The term “dam” has the meaning given the term in section 2 of the National Dam Safety Program Act (33 U.S.C. 467).

(B) INCLUSIONS.—The term “dam” includes any structure, facility, equipment, or vehicle used in connection with the operation of a dam.

(2) FUND.—The term “Fund” means, as applicable—

(A) the High-Hazard Indian Dam Safety Deferred Maintenance Fund established by subsection (b)(1)(A); or

(B) the Low-Hazard Indian Dam Safety Deferred Maintenance Fund established by subsection (b)(2)(A).

(3) HIGH HAZARD POTENTIAL DAM.—The term “high hazard potential dam” means a dam assigned to the significant or high hazard potential classification under the guidelines published by the Federal Emergency Management Agency entitled “Federal Guidelines for Dam Safety: Hazard Potential Classification System for Dams” (FEMA Publication Number 333).

(4) INDIAN TRIBE.—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

(5) LOW HAZARD POTENTIAL DAM.—The term “low hazard potential dam” means a dam assigned to the low hazard potential classification under the guidelines published by the Federal Emergency Management Agency entitled “Federal Guidelines for Dam Safety: Hazard Potential Classification System for Dams” (FEMA Publication Number 333).

(6) SECRETARY.—The term “Secretary” means the Secretary of the Interior, acting through the Assistant Secretary for Indian Affairs, in consultation with the Secretary of the Army



(b) INDIAN DAM SAFETY DEFERRED MAINTENANCE FUNDS.—

(1) HIGH-HAZARD FUND.—

(A) ESTABLISHMENT.—There is established in the Treasury of the United States a fund, to be known as the “High-Hazard Indian Dam Safety Deferred Maintenance Fund”, consisting of—

- (i) such amounts as are deposited in the Fund under subparagraph (B); and
- (ii) any interest earned on investment of amounts in the Fund under subparagraph (D).

(B) DEPOSITS TO FUND.—

(i) IN GENERAL.—For each of fiscal years 2017 through 2023, the Secretary of the Treasury shall deposit in the Fund \$22,750,000 from the general fund of the Treasury.

(ii) AVAILABILITY OF AMOUNTS.—Amounts deposited in the Fund under clause (i) shall be used, subject to appropriation, to carry out this section.

(C) EXPENDITURES FROM FUND.—

(i) IN GENERAL.—Subject to clause (ii), for each of fiscal years 2017 through 2023, the Secretary may, to the extent provided in advance in appropriations Acts, expend from the Fund, in accordance with this section, not more than the sum of—

(I) \$22,750,000; and

(II) the amount of interest accrued in the Fund



(ii) ADDITIONAL EXPENDITURES.—The Secretary may expend more than \$22,750,000 for any fiscal year referred to in clause (i) if the additional amounts are available in the Fund as a result of a failure of the Secretary to expend all of the amounts available under clause (i) in 1 or more prior fiscal years.

(D) INVESTMENTS OF AMOUNTS.—

(i) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary, required to meet current withdrawals.

(ii) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to, and form a part of, the Fund.

(E) TRANSFERS OF AMOUNTS.—

(i) IN GENERAL.—The amounts required to be transferred to the Fund under this paragraph shall be transferred at least monthly.

(ii) ADJUSTMENTS.—Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates are in excess of or less than the amounts required to be transferred.

(F) TERMINATION.—On September 30, 2023—

(i) the Fund shall terminate; and

(ii) the unexpended and unobligated balance of the Fund shall be transferred to the general fund of the Treasury.



(2) LOW-HAZARD FUND.—

(A) ESTABLISHMENT.—There is established in the Treasury of the United States a fund, to be known as the “Low-Hazard Indian Dam Safety Deferred Maintenance Fund”, consisting of—

(i) such amounts as are deposited in the Fund under subparagraph (B); and

(ii) any interest earned on investment of amounts in the Fund under subparagraph (D).

(B) DEPOSITS TO FUND.—

(i) IN GENERAL.—For each of fiscal years 2017 through 2023, the Secretary of the Treasury shall deposit in the Fund \$10,000,000 from the general fund of the Treasury.

(ii) AVAILABILITY OF AMOUNTS.—Amounts deposited in the Fund under clause (i) shall be used, subject to appropriation, to carry out this section.

(C) EXPENDITURES FROM FUND.—

(i) IN GENERAL.—Subject to clause (ii), for each of fiscal years 2017 through 2023, the Secretary may, to the extent provided in advance in appropriations Acts, expend from the Fund, in accordance with this section, not more than the sum of—

(I) \$10,000,000; and

(II) the amount of interest accrued in the Fund.

(ii) ADDITIONAL EXPENDITURES.—The Secretary may expend more than \$10,000,000 for any fiscal year referred to in clause (i) if the additional amounts are available in the Fund as a result of a failure of the Secretary to expend all of the amounts available under clause (i) in 1 or more prior fiscal years.



(D) INVESTMENTS OF AMOUNTS.—

(i) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary, required to meet current withdrawals.

(ii) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to, and form a part of, the Fund.

(E) TRANSFERS OF AMOUNTS.—

(i) IN GENERAL.—The amounts required to be transferred to the Fund under this paragraph shall be transferred at least monthly.

(ii) ADJUSTMENTS.—Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates are in excess of or less than the amounts required to be transferred.

(F) TERMINATION.—On September 30, 2023—

(i) the Fund shall terminate; and

(ii) the unexpended and unobligated balance of the Fund shall be transferred to the general fund of the Treasury.

(c) REPAIR, REPLACEMENT, AND MAINTENANCE OF CERTAIN INDIAN DAMS.—

(1) PROGRAM ESTABLISHMENT.—

(A) IN GENERAL.—The Secretary shall establish a program to address the deferred maintenance needs of Indian dams that—

(i) create flood risks or other risks to public or employee safety or natural or cultural resources; and

(ii) unduly impede the management and efficiency of Indian dams.



(B) FUNDING.—

(i) **HIGH-HAZARD FUND.**—Consistent with sub- section (b)(1)(B), the Secretary shall use or transfer to the Bureau of Indian Affairs not less than \$22,750,000 of amounts in the High-Hazard Indian Dam Safety Deferred Maintenance Fund, plus accrued interest, for each of fiscal years 2017 through 2023 to carry out maintenance, repair, and replacement activities for 1 or more of the Indian dams described in paragraph (2)(A).

(ii) **LOW-HAZARD FUND.**—Consistent with sub- section (b)(2)(B), the Secretary shall use or transfer to the Bureau of Indian Affairs not less than \$10,000,000 of amounts in the Low-Hazard Indian Dam Safety Deferred Maintenance Fund, plus accrued interest, for each of fiscal years 2017 through 2023 to carry out maintenance, repair, and replacement activities for 1 or more of the Indian dams described in paragraph (2)(B).

(C) COMPLIANCE WITH DAM SAFETY POLICIES.—Maintenance, repair, and replacement activities for Indian dams under this section shall be carried out in accordance with the dam safety policies of the Director of the Bureau of Indian Affairs established to carry out the Indian Dams Safety Act of 1994 (25 U.S.C. 3801 et seq.).



(2) ELIGIBLE DAMS.—

(A) HIGH HAZARD POTENTIAL DAMS.—The dams eligible for funding under paragraph (1)(B)(i) are Indian high hazard potential dams in the United States that—

(i) are included in the safety of dams program established pursuant to the Indian Dams Safety Act of 1994 (25 U.S.C. 3801 et seq.); and

(iii)(I)(aa) are owned by the Federal Government, as listed in the Federal inventory required by Executive Order 13327 (40 U.S.C. 121 note; relating to Federal real property asset management); and

(bb) are managed by the Bureau of Indian Affairs (including dams managed under contracts or compacts pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.)); or

(II) have deferred maintenance documented by the Bureau of Indian Affairs.

(B) LOW HAZARD POTENTIAL DAMS.—The dams eligible for funding under paragraph (1)(B)(ii) are Indian low hazard potential dams in the United States that, on the date of enactment of this Act—

(i) are covered under the Indian Dams Safety Act of 1994 (25 U.S.C. 3801 et seq.); and

(ii)(I)(aa) are owned by the Federal Government, as listed in the Federal inventory required by Executive Order 13327 (40 U.S.C. 121 note; relating to Federal real property asset management); and



(bb) are managed by the Bureau of Indian Affairs (including dams managed under contracts or compacts pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.)); or
(II) have deferred maintenance documented by the Bureau of Indian Affairs.

(3) REQUIREMENTS AND CONDITIONS.—Not later than 120 days after the date of enactment of this Act and as a pre-condition to amounts being expended from the Fund to carry out this subsection, the Secretary, in consultation with representatives of affected Indian tribes, shall develop and submit to Congress—

(A) programmatic goals to carry out this subsection that—

- (i) would enable the completion of repairing, replacing, improving, or performing maintenance on Indian dams as expeditiously as practicable, subject to the dam safety policies of the Director of the Bureau of Indian Affairs established to carry out the Indian Dams Safety Act of 1994 (25 U.S.C. 3801 et seq.);
- (ii) facilitate or improve the ability of the Bureau of Indian Affairs to carry out the mission of the Bureau of Indian Affairs in operating an Indian dam; and
- (iii) ensure that the results of government-to-government consultation required under paragraph (4) be addressed; and



(B) funding prioritization criteria to serve as a methodology for distributing funds under this subsection that take into account—

(i) the extent to which deferred maintenance of Indian dams poses a threat to—

(I) public or employee safety or health;

(II) natural or cultural resources; or

(III) the ability of the Bureau of Indian Affairs to carry out the mission of the Bureau of Indian Affairs in operating an Indian dam;

(ii) the extent to which repairing, replacing, improving, or performing maintenance on an Indian dam will—

(I) improve public or employee safety, health, or accessibility;

(II) assist in compliance with codes, standards, laws, or other requirements;

(III) address unmet needs; or

(IV) assist in protecting natural or cultural resources;

(iii) the methodology of the rehabilitation priority index of the Secretary, as in effect on the date of enactment of this Act;

(iv) the potential economic benefits of the expenditures on job creation and general economic development in the affected tribal communities;

(v) the ability of an Indian dam to address tribal, regional, and watershed level flood prevention needs;



(vi) the need to comply with the dam safety policies of the Director of the Bureau of Indian Affairs established to carry out the Indian Dams Safety Act of 1994 (25 U.S.C. 3801 et seq.);

(vii) the ability of the water storage capacity of an Indian dam to be increased to prevent flooding in downstream tribal and nontribal communities; and

(viii) such other factors as the Secretary determines to be appropriate to prioritize the use of available funds that are, to the fullest extent practicable, consistent with tribal and user recommendations received pursuant to the consultation and input process under paragraph (4).

(4) TRIBAL CONSULTATION AND USER INPUT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), before expending funds on an Indian dam pursuant to paragraph (1) and not later than 60 days after the date of enactment of this Act, the Secretary shall—

(i) consult with the Director of the Bureau of Indian Affairs on the expenditure of funds;

(ii) ensure that the Director of the Bureau of Indian Affairs advises the Indian tribe that has jurisdiction over the land on which a dam eligible to receive funding under paragraph (2) is located on the expenditure of funds; and

(iii) solicit and consider the input, comments, and recommendations of the landowners served by the Indian dam.

(B) EMERGENCIES.—If the Secretary determines that an emergency circumstance exists with respect to an Indian dam, subparagraph (A) shall not apply with respect to that Indian dam.



(5) ALLOCATION AMONG DAMS.—

(A) IN GENERAL.—Subject to subparagraph (B), to the maximum extent practicable, the Secretary shall ensure that, for each of fiscal years 2017 through 2023, each Indian dam eligible for funding under paragraph (2) that has critical maintenance needs receives part of the funding under paragraph (1) to address critical maintenance needs.

(B) PRIORITY.—In allocating amounts under paragraph (1)(B), in addition to considering the funding priorities described in paragraph (3), the Secretary shall give priority to Indian dams eligible for funding under paragraph (2) that serve—

- (i) more than 1 Indian tribe within an Indian reservation; or
- (ii) highly populated Indian communities, as determined by the Secretary.

(C) CAP ON FUNDING.—

(i) IN GENERAL.—Subject to clause (ii), in allocating amounts under paragraph (1)(B), the Secretary shall allocate not more than \$10,000,000 to any individual dam described in paragraph (2) during any consecutive 3-year period.

(ii) EXCEPTION.—Notwithstanding the cap described in clause (i), if the full amount under paragraph (1)(B) cannot be fully allocated to eligible Indian dams because the costs of the remaining activities authorized in paragraph (1)(B) of an Indian dam would exceed the cap described in clause (i), the Secretary may allocate the remaining funds to eligible Indian dams in accordance with this subsection.



(D) BASIS OF FUNDING.—Any amounts made available under this paragraph shall be nonreimbursable.

(E) APPLICABILITY OF ISDEAA.—The Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.) shall apply to activities carried out under this paragraph.

(d) TRIBAL SAFETY OF DAMS COMMITTEE.—

(1) ESTABLISHMENT OF COMMITTEE.—

(A) ESTABLISHMENT.—The Secretary of the Interior shall establish within the Bureau of Indian Affairs the Tribal Safety of Dams Committee (referred to in this paragraph as the “Committee”).

(B) MEMBERSHIP.—

(i) COMPOSITION.—The Committee shall be composed of 15 members, of whom—

(l) 11 shall be appointed by the Secretary of the Interior from among individuals who, to the maximum extent practicable, have knowledge and expertise in dam safety issues and flood prevention and mitigation, of whom not less than 1 shall be a member of an Indian tribe in each of the Bureau of Indian Affairs regions of—

(aa) the Northwest Region;

(bb) the Pacific Region;

(cc) the Western Region;

(dd) the Navajo Region;

(ee) the Southwest Region;

(ff) the Rocky Mountain Region;

(gg) the Great Plains Region; and

(hh) the Midwest Region;



(II) 2 shall be appointed by the Secretary of the Interior from among employees of the Bureau of Indian Affairs who have knowledge and expertise in dam safety issues and flood prevention and mitigation;

(III) 1 shall be appointed by the Secretary of the Interior from among employees of the Bureau of Reclamation who have knowledge and expertise in dam safety issues and flood prevention and mitigation; and

(IV) 1 shall be appointed by the Secretary of the Army from among employees of the Corps of Engineers who have knowledge and expertise in dam safety issues and flood prevention and mitigation.

(ii) NONVOTING MEMBERS.—The members of the Committee appointed under subclauses (II) and (III) of clause (i) shall be nonvoting members.

(iii) DATE.—The appointments of the members of the Committee shall be made as soon as practicable after the date of enactment of this Act.

(C) PERIOD OF APPOINTMENT.—Members shall be appointed for the life of the Committee.

(D) VACANCIES.—Any vacancy in the Committee shall not affect the powers of the Committee, but shall be filled in the same manner as the original appointment.

(E) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Committee have been appointed, the Committee shall hold the first meeting.

(F) MEETINGS.—The Committee shall meet at the call of the Chairperson.

(G) QUORUM.—A majority of the members of the Committee shall constitute a quorum, but a lesser number of members may hold hearings.

(H) CHAIRPERSON AND VICE CHAIRPERSON.—The Committee shall select a Chairperson and Vice Chairperson from among the members.



(2) DUTIES OF THE COMMITTEE.—

(A) STUDY.—The Committee shall conduct a thorough study of all matters relating to the modernization of the Indian Dams Safety Act of 1994 (25 U.S.C. 3801 et seq.).

(B) RECOMMENDATIONS.—The Committee shall develop recommendations for legislation to improve the Indian Dams Safety Act of 1994 (25 U.S.C. 3801 et seq.).

(C) REPORT.—Not later than 1 year after the date on which the Committee holds the first meeting, the Committee shall submit a report containing a detailed statement of the findings and conclusions of the Committee, together with recommendations for legislation that the Committee considers appropriate, to—

(i) the Committee on Indian Affairs of the Senate; and

(ii) the Committee on Natural Resources of the House of Representatives.

(3) POWERS OF THE COMMITTEE.—

(A) HEARINGS.—The Committee may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Committee considers appropriate to carry out this paragraph.

(B) INFORMATION FROM FEDERAL AGENCIES.—

(i) IN GENERAL.—The Committee may secure directly from any Federal department or agency such information as the Committee considers necessary to carry out this paragraph.

(ii) REQUEST.—On request of the Chairperson of the Committee, the head of any Federal department or agency shall furnish information described in clause (i) to the Committee.

(C) POSTAL SERVICES.—The Committee may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(D) GIFTS.—The Committee may accept, use, and dispose of gifts or donations of services or property.



(4) COMMITTEE PERSONNEL MATTERS.—

(A) COMPENSATION OF MEMBERS.—

(i) NON-FEDERAL MEMBERS.—Each member of the Committee who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Committee.

(ii) FEDERAL MEMBERS.—Each member of the Committee who is an officer or employee of the Federal Government shall serve without compensation in addition to that received for services as an officer or employee of the Federal Government.

(B) TRAVEL EXPENSES.—The members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Committee.



(C) STAFF.—

(i) IN GENERAL.—

(I) APPOINTMENT.—The Chairperson of the Committee may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Committee to perform the duties of the Committee.

(II) CONFIRMATION.—The employment of an executive director shall be subject to confirmation by the Committee.

(ii) COMPENSATION.—The Chairperson of the Committee may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of that title.

(D) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Committee without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(E) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Committee may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.



(5) **TERMINATION OF THE COMMITTEE.**—The Committee shall terminate 90 days after the date on which the Committee submits the report under paragraph (2)(C).

(6) **FUNDING.**—Of the amounts authorized to be expended from either Fund, \$1,000,000 shall be made available from either Fund during fiscal year 2017 to carry out this subsection, to remain available until expended

(e) INDIAN DAM SURVEYS.—

(1) **TRIBAL REPORTS.**—The Secretary shall request that, not less frequently than once every 180 days, each Indian tribe submit to the Secretary a report providing an inventory of the dams located on the land of the Indian tribe.

(2) **BIA REPORTS.**—Not less frequently than once each year, the Secretary shall submit to Congress a report describing the condition of each dam under the partial or total jurisdiction of the Secretary.

(f) FLOOD PLAIN MANAGEMENT PILOT PROGRAM.—

(1) **ESTABLISHMENT.**—The Secretary shall establish, within the Bureau of Indian Affairs, a flood plain management pilot program (referred to in this subsection as the “program”) to provide, at the request of an Indian tribe, guidance to the Indian tribe relating to best practices for the mitigation and prevention of floods, including consultation with the Indian tribe on—

(A) flood plain mapping; or

(B) new construction planning.

(2) **TERMINATION.**—The program shall terminate on the date that is 4 years after the date of enactment of this Act.

(3) **FUNDING.**—Of the amounts authorized to be expended from either Fund, \$250,000 shall be made available from either Fund during each of fiscal years 2017, 2018, and 2019 to carry out this subsection, to remain available until expended.

